

May 2, 2003

RE: Trust Preferred Securities

This correspondence is to clarify policy statement POL-001-01 in response to your request regarding the authority of Indiana commercial banks and savings banks to purchase and hold Private Placement Trust Preferred Securities as loans and extensions of credit.

Private Placement Trust Preferred Securities consist of private placement or exempt offerings which will be sold in a private placement, will not be rated, and will not be readily marketable. Based on the following discussion, the Department of Financial Institutions does not object to Indiana chartered commercial banks and savings banks purchasing, accounting for, and retaining these type of instruments as loans or extensions of credit subject to the investment limitations in IC 28-1-11-4 or IC 28-6.1-10-6.

On January 11, 2001, the Members of the Indiana Department of Financial Institutions issued policy statement POL-001-01. This policy statement permits Indiana commercial banks and savings banks to purchase and retain Trust Preferred Securities as investment securities pursuant to the limitations set forth in IC 28-1-11-4 for commercial banks and IC 28-6.1-10 for savings banks. IC 28-1-11-4(e) permits commercial banks to purchase investment securities that are not rated provided the bank obtains financial information that adequately documents the investment quality of the security. IC 28-6.1-10-8.5(b) provides this same authority for savings banks.

An issue arises because FDIC FIL 16-99 states that non-member banks may not invest in Trust Preferred Securities as investments unless they meet both the investment quality and marketability requirements of 12 CFR Part 1. However, the FDIC has also ruled, subject to state law, Trust Preferred Securities that do not meet both the investment quality and marketability requirements may be acquired as loans and extensions of credit.

Given the fact that IC 28-1-11-4(e) and IC 28-6.1-10-8.5(b) clearly provide for the purchase of non-rated securities and the Members of the Department have expressly stated that Trust Preferred Securities are allowable investments, the Department does not object to state commercial banks and savings banks acquiring, accounting for, and retaining these types of instruments as loans and extensions of credit, subject to the investment limitations prescribed in IC 28-1-11-4 for commercial banks and IC 28-6.1-10 for savings bank, and applicable federal regulatory requirements.

Regardless of whether an institution acquires Trust Preferred Securities as investment securities or loans and extensions of credit, the institution's policies must address the liquidity, marketability, appropriate pricing, interest rate risk, credit risk, concentration limits, and the embedded options associated with these instruments. Examiners will review the institution's policies for their appropriateness during the supervisory process. Trust Preferred Securities will be reviewed for credit worthiness and classified accordingly if warranted.

Sincerely,

Charles W. Phillips  
Director

cc: James M. Cooper, Deputy Director  
Randall L. Rowe, Bank Supervisor  
Mark Gray, Field Supervisor  
Paul Brockman, Field Supervisor